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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.75 of 2004
and 176 of 2004

M/s.A.R.Complex,
No.69, Arcot Road,
Valasaravakkam,
Chennai-87. ..Appellant in T.C.(A) No.75 of 2004

M/s.A.R.Plaza,
No.1, Arcot Road,
Valasaravakkam,
Chennai-87. ..Appellant in T.C.(A) No.176 of 2004

Vs.

Income Tax Officer,
Ward III(1), Chennai. ..Respondent in both the T.C.(A)s.

Appeals under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench 'D', Chennai in I.T.A. No.2005 & 2007 (Mds)/2002 dated 09.06.2003 for the assessment year 1999-2000, against ITA No.28/02-03 dated 14.11.02 on the file commissioner of Income Tax (Appeals)VII Chennai against PAN/GIR 75208A dated 28.2.02 on the file of the Income Tax officer ward III-(1) Chennai. (TC.No.75/04) appeal against ITA 25/02-03 dt.30.10.02 on the file of the Commissioner of Income Tax (Appeals) Chennai in PAN/GIR in AABFA 3351J on the file of the Income Tax officer ward III(1) Chennai (TC.176/04)

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For Appellants : Mr.D.Trilokchand Chopda

For Respondent : Mr.N.Muralikumaran,
Sr.Standing Counsel

COMMON JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

These appeals are filed under Section 260A of the Income Tax Act, 1961 by the assessees, against the order of the Income Tax Appellate Tribunal, Bench 'D', Chennai in I.T.A. No.2005 & 2007 (Mds)/2002 dated 09.06.2003. On 04.02.2004, this Court admitted T.C.(A) No.75 of 2004 and formulated the following substantial questions of law:-

> 1. Whether the Tribunal is right in law in holding that the income derived from the commercial complex is to be treated as income from property?
>
> 2. Having found that the commercial complex is a business asset of the appellant, whether the Tribunal went wrong in holding that income from exploitation of a business asset is income from property?

On 15.04.2004, this Court admitted T.C.(A)No.176 of 2004 and formulated the following substantial questions of law:-

> 1. Whether the Tribunal is right in law in passing the impugned order without considering the case in the proper perspective and the submissions made?
>
> 2. Whether the Tribunal is right in holding that the income derived from the commercial complex is to be treated as income from property?
>
> 3. Having found that the commercial complex is a business asset of the appellant, whether the Tribunal went wrong in holding that income from exploitation of a business asset is income from property?
>
> 4. Whether the assessment in the status of a firm is sustainable in law, there being no business income?

2. Both these appeals have been filed by two different assessees who are sister concerns for an identical issue. Hence we are taking up both these appeals and disposing the same by a common judgment.

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3. The facts leading to the above substantial questions of law are as under:-

T.C.(A) No.75 of 2004:-

The assessee is a partnership firm and it came into existence on 1st day of April 1992. It consisted of five partners. The business of the assessee is developing, constructing commercial complex and running them as business centres and such other business as may be mutually agreed amongst the partners. The business also include providing occupants services in the nature of providing security, supervisor, sweeper etc., providing lighting in all common areas, water and sanitation facilities and maintain the building, the common areas, the overhead tank, sump etc. for the peaceful, smooth, effective and conducive conduct of business of the occupants and to provide such other services such as common reception, telephone booth, generator etc. as may be required by the occupants and agreed upon by both the parties from time to time. There is also a Service-cum-Lease Agreement entered by the assessee and the occupant on 1st of April 1997. The relevant assessment year is 1999-2000 and the corresponding accounting year ended on 31.03.1999. The assessee filed Return of income on 22.03.2000 admitting an income of Rs.3,850/- under the head "business". It is seen from the profit and loss account accompanying the Return that the entire receipts were only from rentals. The Assessing Officer was of the view that the rental income has to be treated as "income from house property" and not under the head "business" and hence notice under Section 148 of the Income-tax Act ("Act" in short) was issued on 22.11.2000. The assessee firm by its letter dated 13.12.2000 stated that the Return filed on 22.03.2000 may be treated as the one filed in response to the notice under Section 148 of the Act. Later, notice under Section 143(2) was issued to the assessee on 06.12.2000 requiring the assessee to appear on 19.12.2000. The assessment was completed under Section 143(3) r/w Section 147 of the Act and assessed the rental receipts under the head "house property" and determined a total income of Rs.2,21,540/-. Aggrieved by the order the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) dismissed the appeal and confirmed the order of the Assessing Officer. Aggrieved, the assessee filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal dismissed the appeal and confirmed the order of the lower authority. Hence the present appeal by the assessee.

T.C.No.176 of 2004:-

The assessee is a partnership firm and it came into existence on 1st day of April 1993. It consisted of four partners. The business of the assessee is developing, constructing commercial complex and running them as business centres and such other business as may be mutually agreed amongst the partners. The business also include providing occupants services in the nature of providing security, supervisor, sweeper etc., providing lighting in all common areas, water and sanitation facilities and maintain the building, the common areas, the overhead tank, sump etc. for the peaceful, smooth, effective and conducive conduct of business of the occupants and to provide such other services such as common reception, telephone booth, generator etc. as may be required by the occupants and

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agreed upon by both the parties from time to time. There is also a Service-cum-Lease Agreement entered by the assessee and the occupants on 1st of April 1997. The relevant assessment year is 1999-2000 and the corresponding accounting year ended on 31.03.1999. The assessee filed Return of income on 22.03.2000 for the assessment year 1998-99 admitting an income of Rs.2,760/- under the head "business". It is seen from the profit and loss account accompanying the Return that the entire receipts were only from rentals. The Assessing Officer was of the view that the rental income has to be treated as "income from house property" and not under the head "business" and hence notice under Section 148 of the Act was issued on 22.11.2000. The assessee firm by its letter dated 13.12.2000 stated that the Return filed on 22.03.2000 may be treated as the one filed in response to the notice under Section 148 of the Act. Later, notice under Section 143(2) was issued to the assessee on 06.12.2000 requiring the assessee to appear on 19.12.2000. The assessment was completed under Section 143(3) r/w Section 147 of the Act and assessed the rental receipts under the head "house property" and determined a total income of Rs.2,42,500/-. Aggrieved by the order the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) dismissed the appeal and confirmed the order of the Assessing Officer. Aggrieved, the assessee filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal dismissed the appeal and confirmed the order of the lower authority. Hence the present appeal by the assessee.

4. Learned counsel appearing for the assessee in both these tax cases submitted that the assessees constructed business centres and let out the same and continued providing its services, as business activity. The assessee firms were constituted only for the purpose of carrying on its activity. Hence the receipts constitute only business receipts. Hence the order passed by the authorities below are wrong, illegal, without basis and justification. It is further submitted that there are enough proof and material evidence to show that the assessees provide services to the occupants and there are Service Agreements entered by the assessees with their occupants. There is no dispute regarding providing of services. It is only because of non-filing the sufficient proof before the authorities below, the authorities held against the assessees. Alternatively, the authorities ought to have bifurcated the receipts and quantified a portion of the receipts for rendering services and hence the same should be assessed under the head "income from business" or "income from other sources". Hence the authorities are wrong in assessing the whole income under the head "income from house property".

5. Learned Senior Standing counsel appearing for the Revenue submitted that the issue is covered by this Court judgment reported in 286 ITR 685 in the case of C.I.T. Vs. Chennai Properties and Investments Ltd. in favour of the Revenue, wherein it was held that the income from letting out the building belonging to it should be assessable as income from property. In respect of the apportionment of the rental receipt, the assessee had not produced any material or evidence to the authorities below. Hence the order passed by the authorities are in confirmity with law.

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6. Heard the counsel. It is fairly stated by the counsel appearing for the assessees that mere letting out the property and deriving income from it should be assessed only under the head "income from house property" and also the issue now stands concluded by this Court judgment reported in 286 ITR 685 in the case of C.I.T. Vs. Chennai Properties and Investments Ltd. in favour of the Revenue. Hence we answer the questions in favour of the Revenue, against the assessee.

7. An alternative argument is also advanced that the whole receipt amount should not be assessed under the head "income from house property" on the ground that certain portion of the amount is related to services provided as per the agreements which are independent ones. The rental receipts shows only the consolidated amount, instead of apportioning it into different heads. The Revenue should have apportioned the amounts and such apportioned amounts should be assessed under the head "income from business" or "income from other sources". In the present cases, there are Service-cum-Lease Agreements entered on 1st April 1997 by the assessees with their respective occupants. For convenient purpose, we reproduce below the clauses contained in one of the Tax Case, namely T.C. No.75 of 2004:-

> "1. The consolidated service charges payable shall be Rs.1,200/- (Rupees one thousand and two hundred only) per month or such sum as agreed upon mutually by both the parties.
>
> 2. The advance amount shall be Rs.30,000/- (Rupees thirty thousand only) which shall be Interest free.
>
> 3. The OCCUPANT / SERVICE RECEIVER shall also be entitled to sub-lease this facility with the prior permission of LANDLORD / SERVICE PROVIDER.
>
> 4. The service cum lease agreement shall be valid for a maximum of 11 months, which can however be extended further / terminated by mutual agreement at any time.
>
> 5. The LANDLORD / SERVICE PROVIDER shall provide services of security, supervisor, sweeper, water, sanitation and such other services such as common reception, telephone booth, generator etc. as may be required by the occupants for their peaceful and conducive as well as smooth and efficient conduct of business and agreed upon by both the parties from time to time.
>
> 6. The LANDLORD / SERVICE PROVIDER shall bear the cost of municipal / corporation taxes, common electricity charges, maintenance of building, supervisor, security, water, sanitation and such other services as agreed upon from time to time.
>
> 7. The premises is being utilised for business purpose only."

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From a reading of the above clauses, it is clear that the assessee firm has to provide certain services. For the purpose of providing such services, the occupant has to pay a consolidated charge of Rs.1,200/- per month in the case of T.C.No.75 of 2004. There is no dispute regarding the actual services provided by the assessee firms and the Revenue also did not deny the same. The only reason given by the Tribunal is that the assessees failed to substantiate their claims. The relevant portion of the order of the Tribunal reads as under:-

> "3. We have given very careful consideration to the submissions and to the various documents filed before us. Referring to the balance-sheet of the firms we notice that there are no generators. There is a land and building. Referring to the P&L A/c we find the salary at Rs.27,600 and depreciation claimed and partners remuneration and some general expenses. This is only to show that the claim of the assessee that it had maintained some office and incurred expenditure in this regard is not substantiated. The authorities therefore were justified in coming to the conclusion that such rental receipts are assessable as income from house property. Upholding their orders, both the appeals are dismissed."

Profit and Loss Account as well as Balance Sheet were filed before the authorities wherein all the details regarding expenditures as well as receipts were reflected. There is no proper consideration of the details regarding providing services as well as receipt of the same by the authorities below. The authorities ought to have considered the same. If it is necessary, they have to bifurcate a portion of the rental receipt into various heads. In such circumstances, in the interest of justice, we direct the Assessing Officer to consider the details regarding the services provided as well as the amount received for the same and the said receipt amounts derived from providing services may be considered under the head "income from other sources" or under the head "income from business" and pass orders in accordance with law after giving opportunity to the assessees.

8. With the above observations, the tax cases are disposed of. No costs.

km

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Chennai Bench "D",
   Rajaji Bhavan, Besant Nagar, chennai-90. (5 Copies)

2. The Commissioner of Income-tax (Appeals) VII,
   Chennai-34.

3. The Income-tax Officer,
   Ward III(1), Chennai-600 034.

+1 cc to Mr.T.Pramod Kumar Chopda, Advocate Sr.No.34138.

+2 ccs to Mr.N.Muralikumaran, Advocate Sr.No.34193.

MBS(CO)
dcp/25.6.07

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